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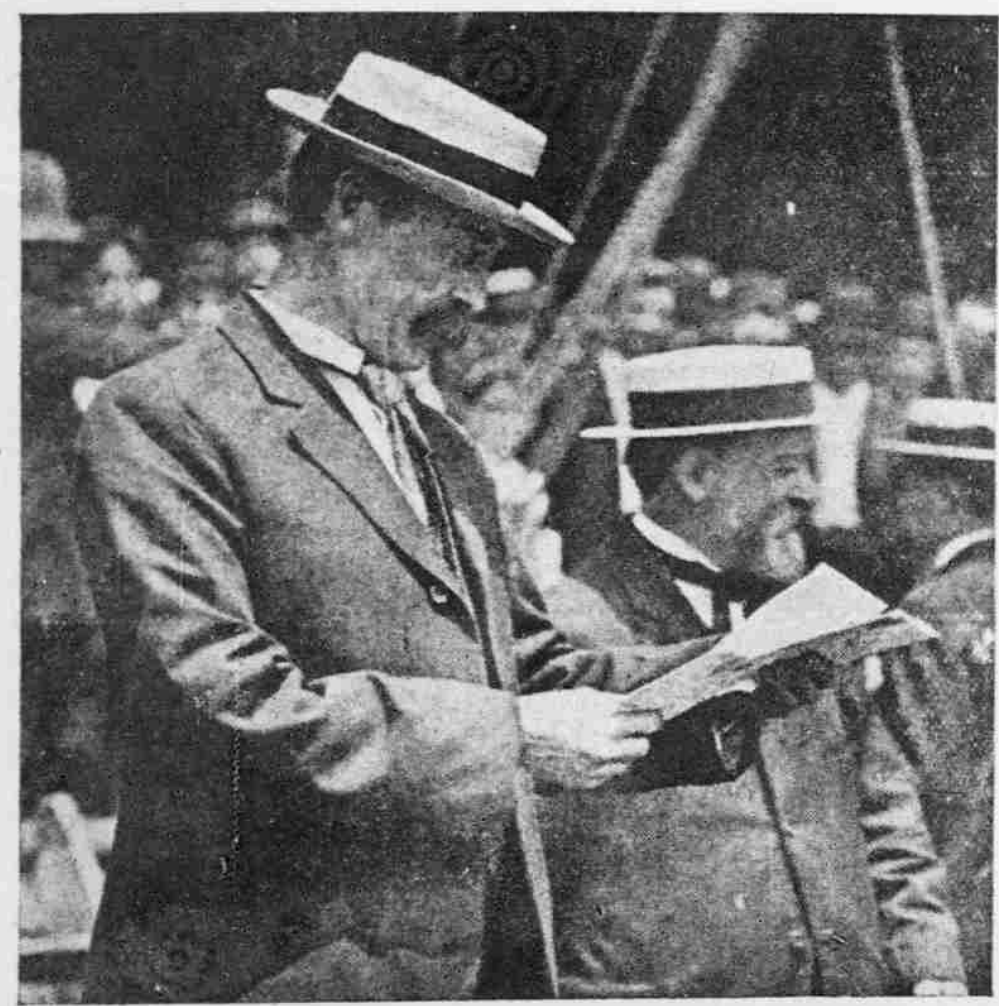
## FERN IS MAYOR: RECOUNT DENIED

The Supreme Court Reaffirms  
Former Rulings--Refuses  
Recount.

The mayoralty contest is decided. Joseph J. Fern is mayor-elect of the City and County of Honolulu, and will take his oath of office on Thursday. The Supreme Court yesterday decided adversely to the contentions of the petitioners for a recount, re-affirmed its previous rulings, and the order dismissing the petition stands. There will be no recount. The decision was by a majority of the court, the opinion being rendered by Chief Justice Hartwell. It is understood that Judge De Bolt does not concur in the opinion, though he gave no dissenting opinion.

The decision of the court is based strictly on the law as the court construes it. As to the policy of recounts, Chief Justice Hartwell said that all the members of the court felt very strongly that a recount should be a matter of course in every instance. This, he suggested, might be done by a Board of Canvassers or some other body selected for the work and should be done on the statement of a number of voters, perhaps ten, as is the custom under the Massachusetts statute. The Boards of Supervisors, he suggested, might be appropriate bodies for such a duty. Under such a system if the validity of any ballots in the recount should be made a question by either side, this, as a matter of law, might then properly come up before the court.

The opinion of the court is as follows: According to the practice in former election contests the defeated candidate could not obtain re-examination of ballots unless upon a showing, which was made in each case, that he had knowledge or direct information of some fraud, accident or mistake which would invalidate or change the result of the election. It must be a real and not an as-



COMMANDER PEARY, JUST BEFORE SAILING FOR THE ARCTIC.

sumed or hypothetical fraud, accident or mistake to make an issue on which a controversy between candidates can arise. There is no contest or issue of fact or law presented by a statement that a decision of inspectors ought to be reversed, corrected or changed because petitioners believe, without definite information, that the decision was incorrect. The petitioners insist that it is unnecessary that the petition be verified at all and that the court, after answer filed, had no jurisdiction, before hearing evidence, to require the petitioners to prove any of their allegations. This has not been required further than to ascertain from the petitioners whether they all had knowledge or direct information concerning their charges, the object being to avoid re-examining ballots upon mere surmise of petitioners or others that there were irregularities. One of the attorneys of the petitioners is consistent in claiming that the law does not require of any petitioner any knowledge or direct information as to any irregularities charged.

ed. In this view any qualified voter, if he can get twenty-nine others to join him in a petition setting forth that any one believes that there has been error of the inspectors, can require the ballots examined and passed upon as well as counted. The statute (Section 56) requires that "All questions as to the validity of any ballot cast at any election held under this act shall be decided immediately and the opinion of the majority of the Board of Inspectors of Election at each polling precinct shall be final and binding, subject to revision by the Supreme Court of the Territory as hereinafter provided;" and further (Section 57) that "Any candidate directly interested" (it will be observed that a candidate indirectly interested has not this right) "or any thirty duly qualified voters of any Election District may file a petition in the Supreme Court setting forth any cause or causes why the decision of any Board of Inspectors should be reversed, corrected or changed." (Continued on Page Eleven.)

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